IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

Crl.Rev.Pet.No. 3134 of 2007()

AGAINST THE ORDER DATED 04/08/2007 IN CRLMP 4906/2007 IN CC.851/2004 of JUDL.MAGISTRATE OF FIRST CLASS-II, KOLLAM

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REVN. PETITIONER: PETITIONER/ACCUSED

A.SHAHUL HAMEED,
SHARITHA NIVAS, PALAKKAL WARD,
THEVALAKKARA VILLAGE, KARUNAGAPALLY,
KOLLAM.

BY ADV. SRI.P.SIVARAJ

RESPONDENTS: COUNTER PETITIONER/COMPLAINANT

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1. PRADEEP, S/O PUSHPAN,
PUNARTHAM, KOOTTIKKADA P.O.,
MAYYANAD, KOLLAM.

2. STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY ADV. SRI. K.S. SIVAKUMAR, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 25/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR , J

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CRL. R.P. NO. 3134 OF 2007

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Dated this the 25th day of September, 2007.

JUDGMENT

The revision petitioner, who is the accused in C.C. No. 851/2004 on the file of Judicial First Class Magistrate Court-II, Kollam, filed a Crl.M.P. No. 4906/2007 for sending the cheque in question to Forensic Science Laboratory (FSL) for ascertaining whether the writings in the cheque was that of the revision petitioner and to ascertain the time gap between the writings of the cheque and signature and also to ascertain whether the signature and the writings on the cheque were part of a continuous process. As per the impugned order dated 04.08.2007, the said request was declined by the Magistrate. Hence, this revision.

2. The learned counsel for the revision petitioner made the following submissions before me in support of his request to send the disputed cheque to FSL:-

Even though Ext.P1 cheque was for a sum of Rs.4 lakhs, the actual liability which the revision petitioner had towards the

complainant was only Rs.1,50,000/- which he had repaid in instalments and the last instalment of Rs.1 lakh was paid on 03.09.2003. The cheque in question was a signed blank cheque given to the complainant with whom the revision petitioner had dealings in the form of purchase of construction materials. With the total discharge of the liability of Rs.1,50,000/- as on 03.09.2003, there was no subsisting liability for the revision petitioner towards the complainant. Even at the earliest possible opportunity, the revision petitioner had issued Annexure A4 reply notice. In the said reply notice, it has been specifically averred that the last instalment of Rs.1 lakh was paid at the office of the Assistant Engineer, PWD Buildings at Thevalakkara and the complainant made the revision petitioner to believe that he was not in possession of the signed blank cheque at that point of time and promised to return the same at the earliest. But he did not do so inspite of repeated demands. The present prosecution laid on the basis of the Ext.P1 cheque is not maintainable since the complaint was dishonestly, fraudulently filling up of the singed blank cheque to convert it into a completed cheque for Rs.4

lakhs. Hence, after the closure of the prosecution evidence, when the case stood posted for defence evidence, the revision petitioner filed Crl.M.P. No. 4906/2007 for sending the cheque to the FSL for the above purpose. The decisions reported in **Francis v. Pradeep** (2004 (2) KLT 1080), **Ronald v. State of West Bengal** (AIR 1954 SC 455), **Gemini v. Chandran** (2007 (2) KLT 439), **Kalyani Bhaskar v. Sampoornam** (2007(1) KLT (SN) 31 (SC), **P.R.Ramakrishnan v P. Govindarajan** (2007 Crl. L.J 1897 Madras), **V.S. Geetha v. M. Aliyarkunju** 1996(2) KLJ 98 and **Kuruvilla v. Sivarama Pillai** (1996(2) KLT 328) support the stand taken by the accused.

3. I cannot agree with the above submission. The respondent complainant has no case that the cheque in question was singed by the revision petitioner in his presence. His case was that all the entries in the cheque were made by some body prior to the affixing of the signature by the accused in his presence. Thus, even according to the complainant, the writings and signature in the cheque did not form part of a continuous process.

4. The only explanation offered by the revision petitioner in his reply affidavit is that the cheque in question was given to the complainant as a signed blank cheque by way of security for the continuous transaction which he was having with the complainant in the purchase of construction materials. In the reply notice, however, he would say that as on 03.09.2003 he discharged the entire liability and on that particular day he claimed to have paid a sum of Rs.1 lakh to the complainant which is not supported by any scrap of paper. He wants the court to believe the further explanation that the complainant who promised to return the cheque leaves did not do that even after repeated demands made by him. It is to be noted that he did not take any legal steps whatsoever for return of the cheque entrusted by him with the complainant.

5. If as a matter of fact, he had discharged all his liabilities towards the complainant and even paid a huge amount of Rs.1 lakh on 03.09.2003, as a reasonable and prudent man, he should have insisted on some documentary evidence to support the discharge. Not only there is no scrap of paper to support the

discharge, he did not admittedly take any legal steps for return of the cheque leaves. It was in the backdrop of these circumstances that the court below rejected the application filed by the revision petitioner to send the cheque in question to FSL for the purpose mentioned by the petitioner. I do not find any good ground to interfere with the discretion exercised by the court below which was of the view that the application was filed by the petitioner in order to protract the proceedings and delay the final disposal of the case. I am fortified in this conclusion by the decisions reported in **Francis v. Pradeep** (2004(2) KLT 1080) and **Baby v. T.T. Paul** (2007(3) KHC 732). The revision petition is accordingly dismissed in limine.

V. RAMKUMAR, JUDGE.

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